

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #8	CCRB Case #: 201807283	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/22/2018 1:45 PM	Location of Incident: § 87(2)(b) § 87(2)(b)		Precinct: 07	18 Mo. SOL 2/22/2020	EO SOL 2/22/2020
Date/Time CV Reported Thu, 08/23/2018 9:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/03/2018 12:26 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Francisco Garcia	19234	952763	PSA 4
2. POF Tiffany Bruce	16044	944211	PSA 4
3. POF Liliana Jimenez	03646	940306	PSA 4
4. Officers			PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Genesis Torres	17568	959307	PSA 4
2. POF Rosemary Desalas	13827	945648	PSA 4
3. POM John McGann	03684	950862	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POF Tiffany Bruce	Abuse: Police Officer Tiffany Bruce threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
B.POF Tiffany Bruce	Abuse: Police Officer Tiffany Bruce threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
C.POM Francisco Garcia	Force: Police Officer Francisco Garcia used physical force against § 87(2)(b)	§ 87(2)(b)
D. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
E.POF Liliana Jimenez	Abuse: Police Officer Liliana Jimenez entered § 87(2)(b) in Manhattan.	§ 87(2)(b)

Case Summary

On August 23, 2018, reporting non-witness § 87(2)(b) filed this complaint on behalf of her son § 87(2)(b) with IAB, generating original log # 18-33147. During the course of investigation, it was determined that § 87(2)(b) sister, § 87(2)(b) is also a victim in the case.

On August 22, 2018, at approximately 1:45 p.m., following a fight between § 87(2)(b) and § 87(2)(b) PO Tiffany Bruce, PO Francisco Garcia, PO Liliana Jimenez, and other officers from PSA 4 responded to the § 87(2)(b) of § 87(2)(b) in Manhattan. PO Bruce threatened to tase § 87(2)(b) twice (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). PO Garcia and other officers pushed § 87(2)(b) to the ground (**Allegation C and D: Force, § 87(2)(g)**). PO Jimenez and other officers entered § 87(2)(b) apartment (**Allegation E: Abuse of Authority, § 87(2)(g)**).

The incident was recorded on body-worn cameras (BWC) from PO Bruce, PO Jimenez, PO Genesis Torres, PO John McGann, and PO Rosemary Desalas all from the same command [BR 11 – 22, *Originals*].

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Tiffany Bruce threatened § 87(2)(b) with the use of force.

Allegation (B) Abuse of Authority: Police Officer Tiffany Bruce threatened § 87(2)(b) with the use of force.

It is undisputed that on August 22, 2018, at approximately 1:45 p.m., § 87(2)(b) and § 87(2)(b) were involved in an altercation inside their § 87(2)(b) at § 87(2)(b) in Manhattan. § 87(2)(b) called 911 and reported that she had been assaulted by her brother [NYPD 03]. The responding officers arrived to the § 87(2)(b) floor of the building in one elevator and upon exiting, observed § 87(2)(b) standing in front of the elevator doors with a bicycle. Once he observed the officers, § 87(2)(b) headed to the other elevator located on the same floor and the officers attempted to stop him. As a result of this incident, both § 87(2)(b) and § 87(2)(b) were arrested and charged with an § 87(2)(b), § 87(2)(a) 160.50 since § 87(2)(b) also made an allegation that his sister hit him.

During his in-person statement to the CCRB, § 87(2)(b) stated that after the altercation, he called his mother and was advised to go for a bike ride to take a break [BR 05]. § 87(2)(b) was waiting for an elevator on his floor, and when its doors opened, he observed numerous police officers exiting onto the floor landing. § 87(2)(b) went to the second elevator located within 30 feet of the first one down the hallway. A male officer tried to get § 87(2)(b) attention by saying, “Hey, hey,” but he kept walking. § 87(2)(b) was only able to take a few steps when heard PO Bruce say, “Hey, we’re (or I’m) gonna tase you.” After passing the second elevator, § 87(2)(b) turned around and observed approximately four officers behind him, while the rest went to his apartment on the other side of the hallway. § 87(2)(b) inquired what he could be tased for but did not receive an explanation. § 87(2)(b) and the officers had not had any discussion about the reason for their arrival as of yet. § 87(2)(b) was consistent throughout his statements to the CCRB [BR 04].

In her testimony to the CCRB, PO Bruce stated that she did not recall any details of the radio transmission apart from the fact that it was for an assault in progress [BR 23]. Upon exiting the elevator, PO Bruce heard § 87(2)(b) yelling, “He hit me. He hit me.” Upon observing § 87(2)(b) on the other side of the hallway, PO Bruce, PO Garcia and other officers approached him and asked him whether he hit § 87(2)(b). § 87(2)(b) denied doing so and called his sister a liar. The officers instructed § 87(2)(b) to place his hands behind his back so that they could handcuff him, and § 87(2)(b) yelled, “For what?” PO Bruce told § 87(2)(b) to give his hands or else she would tase him. She explained she made that statement because § 87(2)(b) refused to give his hands, pulled away and flailed them. PO Bruce did not recall what § 87(2)(b) was wearing on that day and whether anything on his body looked like a weapon. PO Bruce had never interacted with § 87(2)(b) prior to that incident.

§ 87(2)(g) Upon exiting the elevator, PO Garcia attempted to make his way towards § 87(2)(b) and after she confirmed that § 87(2)(b) hit her, PO Garcia heard commotion behind his back and officers saying, “Put your hands behind your back.” PO Garcia turned around and observed PO Garcia, PO Torres, PO Bruce and another female officer attempting to place § 87(2)(b) in handcuffs but he was moving his arms and torso and attempting to kick the officers. PO Garcia noted that § 87(2)(b) is approximately 6’ tall and the female officers were all 5’ tall, therefore, the officers were struggling with him. PO Garcia went to assist the officers and grabbed his biceps. § 87(2)(b) became more aggressive by tensing up, moving around, cursing and saying he did not do anything.

The circumstances that preceded § 87(2)(b) stop, depicted in the video from PO Torres’ BWC, attached to IA98, are consistent with § 87(2)(b) account [BR 12]. However, the first 30 seconds of the video do not have audio. As soon as PO Torres exits the elevator, she follows § 87(2)(b) who is walking down the hallway with his bike. At 0:30, PO Torres says, “I’m talking to you, come here.” At 0:32, PO Bruce makes a statement ending with, “... to tase him.” § 87(2)(b) looks back at the officers and continues walking down the hallway. At 0:33, PO Torres calls § 87(2)(b) two more times. § 87(2)(b) stops at the other elevator at 0:38, presses the button and says, “Who are you talking to? You are not touching me.” PO Torres reaches § 87(2)(b) and replies, “Alright, but I am talking to you.” Starting at 0:42, PO Torres instructs § 87(2)(b) to stand by the wall and an officer is seen placing their hand on § 87(2)(b) arm. § 87(2)(b) pulls it away and turns away from the officers. At 0:46, PO Torres tells § 87(2)(b) to stand at a specific location, and § 87(2)(b) says, “No,” and turns away from the officers, while one attempts to turn him around. At 0:50, § 87(2)(b) turns his shoulders away from the officers and tells them, “Don’t touch me.” The officers ask § 87(2)(b) what is happening and he states he is calling his mother while holding his cell phone in his hand. At 0:56, officers are seen holding § 87(2)(b) by his arms and moving to the middle of the hallway while he is attempting to dial his mother on the phone. At 0:58, PO Bruce states again, “I’m gonna have to tase him (or you).” The same part of the incident but from a different perspective was recorded by PO Jimenez’s BWC attached to IA97 [BR 11].

Upon reviewing the video recorded by PO Jimenez’ BWC [BR 11], PO Bruce amended her testimony about when she threatened to tase § 87(2)(b) first [BR 23]. She stated she threatened to tase § 87(2)(b) the first time because he was running away from the officers, thus actively resisting, and she was chasing him.

In her 911 call, § 87(2)(b) stated her brother hit her with an unspecified weapon and hit her § 87(2)(b)-old child [NYPD 13]. § 87(2)(b) also reported that § 87(2)(b) threatened to kill her. She stated she had a bump on her head and she and her child needed an ambulance. § 87(2)(b) described her brother as black male, 6'2" tall, wearing a white shirt, blue Adidas pants, and having a bike. § 87(2)(b) also reported that § 87(2)(b) was leaving their apartment.

NYPD Event #§ 87(2)(b) noted that § 87(2)(b) and her daughter were hit and she had a bump to her head and listed § 87(2)(b) partial description [NYPD 03].

According to NYPD Patrol Guide Procedure 221-01, an officer may use necessary force to ensure the safety of an officer and his partners or to gain compliance [BR 25].

According to NYPD Patrol Guide Procedure 221-08, officers may use conducted electrical weapon (CEW) against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves and others [BR 26]. Active resisting includes evasive movements to avoid the officers' attempts to gain control, including bracing, tensing up, pushing or verbally signaling an intention to avoid or prevent being taken into custody. Active aggression is defined as a threat of an overt assault coupled with presence of ability to commit such assault. Officers may use a laser warning by pointing and placing a laser dot of activated CEW on the subject in order to achieve voluntary compliance. Officers may also issue a verbal warning when applicable. In determining whether the use of force is reasonable, officers should assess the totality of the circumstances and take into account the following factors: the severity of the crime, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects compared to the officers, size, age, and condition of the subject, subject's violent history, presence of hostile crowd, and whether the subject is under the influence.

§ 87(2)(g)

[REDACTED]

As for the second threat of force, by the time PO Bruce made it, several officers had instructed § 87(2)(b) to stop, attempted to hold him steady and have a conversation with him, to which § 87(2)(b) reacted with evasive body movements away from the officers and an explicit verbal refusal to cooperate with the officers. § 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation (C) Force: Police Officer Francisco Garcia used physical force against § 87(2)(b)

Allegation (D) Force: Officers used physical force against § 87(2)(b)

During his CCRB interview, § 87(2)(b) stated that after he was stopped, PO Garcia grabbed him by his arms, placed them behind his back, placed him against the wall and handcuffed him [BR 05]. After that, § 87(2)(b) ended up on the floor. Although he did not recall how it occurred, he believed that PO Garcia grabbed him by his shoulders and pushed him down. § 87(2)(b) denied offering any resistance to the officers as he was being handcuffed and afterwards. He noted that he was just upset and was asking the officers questions why they were grabbing and arresting him. § 87(2)(b) landed on his left arm and immediately felt pain in it. After § 87(2)(b) pockets were searched, the officers lifted him up. At that point, the officers and § 87(2)(b) had a conversation about the reason for their arrival. § 87(2)(b) was consistent in his statements to the CCRB in regards to these allegations [BR 04].

§ 87(2)(b) stated that he sustained pain and swelling to his left arm that lasted for two weeks. Neither he nor his family members took pictures of his injuries. On August 23, 2018, § 87(2)(b) was transported to § 87(2)(b) in Manhattan in an ambulance. He was administered pain medication but was not diagnosed with any serious physical injuries.

The ambulance-care report prepared for § 87(2)(b) on August 23, 2018 notes that he complained of pain to his left shoulder from being grabbed and “forcefully [missing word] against the wall and on the floor” [PD 01]. § 87(2)(b) medical records from § 87(2)(b) from August 23, 2018 note that he was admitted to the emergency department due to the complaint of pain to his left shoulder [PD 03]. It is noted that § 87(2)(b) had abrasions to left anterior shoulder and left knee. § 87(2)(b) reported that he got into a physical altercation with his sister the day before and the police were called. Upon arrival, officers grabbed him by his neck, pushed him against the wall and threw him to the ground. He landed on the floor on his left side. An X-ray of § 87(2)(b) left shoulder was performed, which did not reveal any fractures or dislocations.

In his statement to the CCRB, PO Garcia said that after § 87(2)(b) was handcuffed, he continued moving around, so one of the officers placed him against the wall [BR 24]. As the officers attempted to hold § 87(2)(b) still, he continued moving his body, attempted to walk away towards the staircase and to kick the officers by moving his legs outward. Therefore, § 87(2)(b) was sat down on the floor for safety purposes. PO Garcia, possibly with an assistance of other officers, pulled on § 87(2)(b) leg by holding his pants.

PO Bruce testified that she did not recall if § 87(2)(b) was on the floor after he was handcuffed [BR 23].

According to BWC footage recorded by PO Torres, attached to IA98, § 87(2)(b) is handcuffed at 0:59 while standing facing the wall [BR 12]. The officers are telling § 87(2)(b) to relax several times while he is crying and saying the officers’ actions are not fair. At 1:19, § 87(2)(b) turns around and faces the officers. He is still holding his cell phone and earphones in his right hand, which is behind his back. After a brief conversation with the officers, at 1:37, § 87(2)(b) turns to the right and moves in that direction. A female officer states, “Hold on, sir,” and another officer, possibly PO Bruce, is seen grabbing § 87(2)(b) by his left arm while

another officer presses § 87(2)(b) back against the wall. At 1:41, § 87(2)(b) moves his arm away from PO Bruce. She grabs his arm again pulling him towards herself, and at 1:42, § 87(2)(b) moves his arm away from PO Bruce again telling her not to touch him “like that.” At 1:44, § 87(2)(b) is being held by his arms by PO Garcia and PO McGann and he is then seen standing against the wall with his torso. At 1:45, a female officer, possibly PO Torres, states, “Sit him down,” several times. At 1:50, multiple officers sit § 87(2)(b) on the floor on his buttocks. § 87(2)(b) is seen sitting upwards the entire time and neither his left elbow or arm make contact with the floor.

This part of the incident was also captured by PO McGann’s and PO Bruce’s BWCs from slightly different angles [BR 13 and 15, IAs 99 and 101].

Upon reviewing BWC footage recorded by PO Torres, attached to IA98, PO Bruce stated that after § 87(2)(b) was handcuffed he attempted to walk away, therefore, she grabbed him by his arm “with some pressure” and placed him against the wall [BR 23]. PO Bruce believed that PO Torres told the officers to sit § 87(2)(b) down to prevent him from kicking at the officers.

According to § 87(2)(b) 911 call placed on August 23, 2018, she reported that § 87(2)(b) was beaten up by police and his shoulder was injured [NYPD 15]. § 87(2)(b) also spoke to the 911 operator and said that a Hispanic officer grabbed him by his neck and pushed him against the wall. After that, the officers threw him to the ground on his left side. § 87(2)(b) then reported the same to IAB, generating the complaint [BR 01, NYPD 01].

The handwritten TRI report #§ 87(2)(b) prepared by PO Garcia for § 87(2)(b) notes that he gradually took § 87(2)(b) to the ground [NYPD 07]. However, the digital TRI, entered into the system by Sgt. Jason Bomberger of the same command, does not contain this information. During his interview, PO Garcia explained that he marked in the handwritten report that § 87(2)(b) punched and shoved the officers by mistake and noted that was the first time he had to prepare a TRI [BR 24]. The digital TRI report is consistent with PO Garcia’s explanation [NYPD 07]. Although sections that § 87(2)(b) fled the officers and resisted were initially marked in the handwritten TRI report, they were crossed out by an unknown individual and not transferred in the digital TRI. Both TRI versions also note that § 87(2)(b) alleged he was choked and his allegation was unfounded by the duty captain based on the BWC footage.

According to NYPD Patrol Guide Procedure 221-01, an officer may use necessary force to ensure the safety of an officer and his partners or to gain compliance [BR 25].

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (E) Abuse of Authority: Police Officer Liliana Jimenez entered § 87(2)(b) in Manhattan.

None of the civilians made this allegation, however, it was captured by the BWC.

According to BWC footage recorded by PO Jimenez, attached to IA97, after § 87(2)(b) was handcuffed, PO Jimenez and PO Desalas head to § 87(2)(b) and § 87(2)(b) apartment [BR 11]. They knock on the door and § 87(2)(b) opens it. The officers talk to § 87(2)(b) about § 87(2)(b) actions and she relates to them they were involved in a physical altercation. She states she sustained a lump to her forehead but was not certain how. At 4:54, § 87(2)(b) calls § 87(2)(b) a “dumbass” through the open door and states he was going to jail. She continues yelling at § 87(2)(b) and returns into her apartment after PO Jimenez tells her to calm down. After telling her that, PO Jimenez, follows § 87(2)(b) and enters the hallway of the apartment. § 87(2)(b) continues yelling at § 87(2)(b) while standing in the hallway and PO Jimenez attempts to calm her down. At 5:18, PO Bruce appears to be standing in the hallway of the apartment and tells PO Jimenez that they have a “cross-complaint.” After that, PO Jimenez exits the apartment and talks to PO Bruce about potentially arresting § 87(2)(b) because § 87(2)(b) also alleged that he was hit by his sister. PO Jimenez and other officers subsequently discuss that they should call their lieutenant. The officers ultimately arrested § 87(2)(b) for her part in the altercation with § 87(2)(b).

According to PO Deasalas’ BWC that covers the same part of the incident, attached to IA 100, when § 87(2)(b) is telling the officers she has a lump on her head, PO Jimenez states, “Let me see, let me see,” and moves closer to § 87(2)(b) past the open apartment door [BR 14]. She then steps further back out.

Based on PO McGann’s BWC, attached to IA99, the officers subsequently decided to arrest § 87(2)(b) as well [BR 13].

Following PO Jimenez’s’ and PO Desalas’ entry into the apartment, all other officers entered § 87(2)(b) apartment at different stages of the incident [BR 13, 17, 19].

In People v. Brown, 234 A.D.2d 211 (1996), a resident’s gesture of opening an apartment door, leaving it wide open, and then walking away from it was interpreted as a valid form of implied consent.

In People v. Davis, 120 A.D.2d 606 (1986), a mother’s conduct in stepping away from a door to admit the officers was enough to establish consent.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties [BR 30].
- PO Bruce has been a member of service for 11 years and has been a subject in four other CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- PO Garcia has been a member of service for six years and has been a subject in three other CCRB complaints and five allegations, none of which were substantiated.
 - 201401646 involved use of nightstick as club and physical force allegations against PO Garcia that were closed as unsubstantiated.
 - 201506851 involved a physical force allegation against PO Garcia that was closed as complainant uncooperative.
 - § 87(2)(g)
- PO Jimenez has been a member of service for 13 years and has been a subject in two other CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- On April 4, 2019, a request to determine if a Notice of Claim was filed was submitted; confirmation from the New York City Office of the Comptroller will be forwarded upon receipt [BR 29].
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City [BR 28]. His criminal case that stemmed from the incident is no longer in OCA.
- § 87(2)(b)

Squad No.: 8

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date